

Juvenile Justice Improvement Committee
Judicial Conference of Indiana

Minutes
May 6, 2005

The Juvenile Justice Improvement Committee of the Judicial Conference of Indiana met at the Indiana Judicial Center on Friday, May 6, 2005 from 12:00 noon until 3:00 p.m.

1. Members present. Robert R. Aylsworth, Mary Beth Bonaventura, Christopher L. Burnham, W. Timothy Crowley, Richard A. Dailey, Steve David, Daniel Lee Pflum, Charles F. Pratt, R. Paulette Stagg, Frank Sullivan, and Mary R. Harper, chair.
2. Staff present. Jeffrey Bercovitz and Anne Jordan provided the committee with staff assistance.
3. Minutes approved. The minutes for the meeting on March 4, 2005 were approved.
4. Guests present. James W. Payne, Director, Department of Child Services.
5. Administrative Rule 9 - Confidentiality.
 - a. Judge Pflum revised the format of the frequently asked questions prepared by Magistrate Domine, focusing on delinquency files, which may be open in certain felony and misdemeanor cases. See Attachment No. 1. Jeffrey Bercovitz agreed to forward the revised FAQ to Ron Miller, Division of State Court Administration.
6. Recent legislation. Committee members discussed the following bills:

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| HEA 1001 | DCS budget; DOC claims for county's portion of juvenile placement costs, billing schedule, reduction of prop. tax replacement monies for failure to pay, and agreement to repay past due amounts; duties of DOC commissioner; payment of \$60.00, not ½ the daily cost, for commitment of juveniles to DOC; maximum caseload size of caseworkers; training of caseworkers; caseworker education levels and salaries; judicial officers; other |
| SEA 529 | Dept. of Child Services (DCS) organization; redaction of child death records; record check for juvenile placements; other |
| SEA 340 | Dismissal of child abuse and neglect petitions; distribution of information to prospective adoptive parents; CASA |
| HEA 1794 | Out of school suspension program; student suspension and expulsion |
| SEA 422 | Notice of adoption; consent to adoption; adoption records; paternity denial; other |

They agreed to discuss HEA 1217, 1263, 1358, 1398 and SEA 2, 8, 175, 301, 372, 481, and 569 at their next meeting.
7. Presentation by Judge Payne.
 - a. Judge Payne, Director, Department of Child Services (DCS), reviewed SB 529 with members of the committee. He reported the following on this major piece of legislation:
 - The county must appropriate the amount budgeted for children by the DCS, after consulting with the local judge. It will be effective for calendar year 2006 budgets.

- This legislation provides for regionalization of services for children, with a map of those regions available soon.
- FSSA would privatize determinations of eligibility and TANF.
- Local police and sheriffs shall take fingerprints for record checks conducted by FSSA for out-of-home placements of children with relatives. OFC will pay the \$35.00 fee for the checks for CHINS cases.
- Indiana would be eligible for CAPTA monies with the new requirement of an appointment of a CASA in every CHINS case. He believes Indiana can meet the other requirements of CAPTA.
- Redaction of child death and “near fatality” records would be easier under revised legislation.
- Child protection teams remain in place.
- All DCS case managers must have college degrees.

Judge Payne thanked the judges for not scheduling CHINS cases on Friday, June 24, which will permit him to conduct training for case managers that day. In addition, he plans to have the National Association for Counsel for Children, based in Colorado, conduct training for DCS attorneys during the September judicial conference.

8. Other.

- a. Judge David, Chair of the subcommittee to discuss this Incompetent to Stand Trial juveniles and mental health issues of juveniles agreed to meet at the conclusion of the session on Thursday, June 23, at the Brown County Inn in Nashville, Indiana. Subcommittee members, Judge Dailey, Judge Harper and Judge Pratt agreed to meet at this time.
- b. Jeffrey Bercovitz distributed recent newspaper articles concerning juveniles to members of the committee.

9. Next meeting dates. Committee members agreed to meet again on the following dates: June 3, October 7, and November 4, 2005 from 12:00 noon – 3:00 p.m. at the Indiana Judicial Center.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law

Q1. The Question and Answer section of the Public Access Handbook (page 38) states that CHINS cases are confidential. Does this mean that everything in a CHINS file must be printed on green paper?

A. No. Administrative Rule 9, and Trial Rule 5 do not apply to records sealed by the court pursuant to Ind. Code § 5-14-3-5.5, nor does the obligation imposed by these rules apply to *any* other records to which public access is prohibited by Administrative Rule 9(G)(See Public Access Handbook page 24). Administrative Rule 9(G)(b)(vi) clearly prohibits access to records of most juvenile proceedings, including CHINS cases. That means that everything contained in a CHINS record is confidential by statute. Thus, it is unnecessary to use green paper to create a visual distinction between the public and the confidential documents in such a file because the Juvenile Code already makes the entire record confidential. To conclude that everything filed in a CHINS case must be on green paper is incorrect. The rules simply do not apply.

Q2. Are filings in Termination of Parental Rights cases expected to made on green paper?

A. No. Termination of Parental Rights cases, like CHINS cases, are already confidential per Administrative Rule 9(G)(b)(vi) and Ind. Code § 31-39-1-2. That means that Administrative Rule 9, and Trial Rule 5 do not apply to Termination cases. To conclude that the entire Termination file must be printed on green paper is incorrect.

Q3. I am concerned that the cost of green paper is more than double the cost of white paper. In cases that are confidential pursuant to Ind. Code § 31-39-1-2 (CHINS, JS, JT, JM, and JD cases that do not fall under the categories listed under I.C. 31-39-2-8) is an acceptable alternative simply to stamp a file jacket "CONFIDENTIAL" and thereafter continuing to allow all documents filed in these cases to be filed on white paper?

A. Administrative Rule 9 and Trial Rule 5 do not apply to records to which public access is already prohibited. That means the rule does not apply to the following types of juvenile cases:

1. CHINS(JC);
2. Termination of Parental Rights (JT);
3. Juvenile Status Offense (JS);
4. Juvenile Miscellaneous (JM); or
5. Juvenile Delinquency cases that do not fall under one of the three categories listed under Ind. Code § 31-39-2-8

To conclude that all of the filings contained in any of the categories listed above must be printed on green paper is in error. This conclusion is supported by the substance of the rules at issue and it is supported by reviewing the stated purpose of Administrative Rule 9, and drafter's commentary. None of the eleven listed objectives of Administrative Rule 9 would be furthered by mandating application of Administrative Rule 9, and Trial Rule 5 to juvenile cases which are already subject to a higher level of restriction.

Stamping files that fall into the listed categories "CONFIDENTIAL" might be helpful to the court and clerk staff. Yet, while it might be helpful it is not addressed by the rules and is left to the discretion of each county.

Q4. Are any juvenile files open to the public?

- A. Yes. The following delinquency files are open to the public:
- (1) An act that would be murder or a felony if committed by an adult.
 - (2) An aggregate of two (2) unrelated acts that would be misdemeanors if committed by an adult if the child was at least twelve (12) years of age when the acts were committed.
 - (3) An aggregate of five (5) unrelated acts that would be misdemeanors if committed by an adult if the child was less than twelve (12) years of age when the acts were committed.
- See Ind. Code § 31-39-2-8(a).

Other statutes allow a judge on a case-by-case basis to permit access to juvenile court files.

Q5. For those files that are open, is the entire file open?

- A. No. Before the file is open a petition alleging one of the three situations stated above must be filed. Once a petition has been filed alleging acts that fall within one of the three categories listed above, only specifically enumerated information or documents are publicly accessible, while the rest of the record remains confidential. The list of accessible documents or information in such cases are as follows:

- (1) The child's name.
 - (2) The child's age.
 - (3) The nature of the offense.
 - (4) Chronological case summaries.
 - (5) Index entries.
 - (6) Summonses.
 - (7) Warrants.
 - (8) Petitions.
 - (9) Orders.
 - (10) Motions, excluding:
 - (A) motions concerning psychological evaluations; and
 - (b) motions concerning child abuse and neglect.
 - (11) Decrees.
 - (12) If the child is adjudicated as a delinquent child for an act or combination of acts described in subsection (a)(1), (a)(2), or (a)(3), the child's photograph.
- See Ind. Code § 31-39-2-8 (b).

Anything which does not fall within the above twelve categories needs to be filed on green paper or the offending information must be removed See Ind. Code § 31-39-2-8(c).

- Q6. How can the clerk or court staff apply Administrative Rule 9 to delinquency cases prior to the filing of a delinquency petition and before the mandates of Ind. Code § 31-39-2-8 differentiate between accessible and confidential information?

- A. As the Public Access Handbook notes, "Administrative Rule 9 does not create a 'one size fits all' approach. Each county will have its own opportunity to determine the best and most efficient manner to implement the rule and handle confidential information within the general requirements of the rule." (Public Access Handbook page 51).

The access provisions of Ind. Code § 31-39-2-8 are triggered by the filing of a delinquency petition, not by an adjudication, and not the alleged commission of a delinquent act. Thus, some counties avoid this question by docketing detention hearings on a JM docket, and only opening a JD after the delinquency petition is filed. Another suggestion is simply to anticipate the prosecution's intent at the point of filing.

Attachment No. 1